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**FEB 02 2009**

002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/748,829 Confirmation No.: 7169  
Filed: December 29, 2003  
First Named Inventor: Weidong Yang  
Title: Local Process Variation Correction for Overlay Measurement  
Art Unit: 2624 Examiner: Dennis Rosario  
Atty Docket: NAN066 US

Saratoga, California  
February 2, 2009

Mail Stop Petitions  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO THE DIRECTOR UNDER 37 C.F.R. §1.181**  
**OR IN THE ALTERNATIVE**  
**PETITION FOR REVIVAL OF AN APPLICATION UNDER 37 C.F.R. §1.137(b)**

Dear Sir:

Petition Under 37 C.F.R. §1.181

Applicants hereby petition the Director to invoke supervisory authority under 37 C.F.R. §1.181 in the above-identified patent application to accept Applicants' issue fee transmittal and payment, which Applicants' attorney attempted to timely file with the U.S. Patent and Trademark Office ("USPTO") via facsimile on January 16, 2009.

Applicants received the Notice of Allowance from the Examiner in this application, having a mailing date of October 21, 2008. The Issue Fee was due on January 21, 2009.

On January 16, 2009, attorney for Applicants filed the Issue Fee Transmittal and PTO-2028, along with a Transmittal Form, in the USPTO, via facsimile. The Transmittal Form indicated that a Fee Transmittal Form was attached and included an authorization for the Commissioner to charge any additional fees due to the deposit account of Applicants' attorneys. Attached are copies of the originally filed Transmittal form, Part B - Fee(s) Transmittal, and PTO-2038 form as filed January 16, 2009, as well as the Auto-Reply Facsimile Transmission, received from the USPTO on January 16, 2009. The Auto-Reply

-1-

Application No. 10/748,829

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Facsimile Transmission indicates that 2 pages were received by the USPTO, but it escaped observation that the pages received by the USPTO did not match the pages transmitted.

On February 2, 2009, it was discovered that the Issue Fee facsimile transmission did not go through correctly and completely. The first page of the facsimile transmittal, i.e., the Transmittal Form, was received by the Office, but the "Part B - Fee(s) Transmittal" was cut off at the top, below the mailing address for the USPTO, and the PTO-2038 was not received by the Office at all. Copies of the Transmittal Form and the Part B - Fee(s) Transmittal as received by the USPTO, and downloaded via PAIR, are attached hereto.

Applicants petition the Director to treat the Issue Fee transmittal filed on January 16, 2009, as a timely filed response to the Notice of Allowance. The Transmittal Form and the portion of the Part B - Fee(s) Transmittal, which were received by the USPTO, on January 16 evidence Applicants good faith attempt to properly and timely file the Issue Fee payment.

Additionally, Applicants submit that the Transmittal Form provided authorization to charge a deposit account for any fees and indicated that a Fee Transmittal Form was attached, and in fact, the top portion of the Part B - Fee(s) Transmittal was received by the USPTO. Thus, it should be clear from the forms that were actually received by the USPTO, that Applicants were responding to the Notice of Allowance and in fact tendered the necessary issue fee. Accordingly, Applicants request that the Transmittal Form with its payment authorization, should be treated as the required Issue Fee Payment and therefore the above-identified application is not abandoned.

Applicants believe that no Petition fee is necessary under 37 C.F.R. §1.181, but should Applicants be mistaken or any additional fees be necessary, the undersigned authorizes the Commissioner to charge any necessary fees due to Deposit Account 50-2263.

Petition Under 37 C.F.R. §1.137(b)

Should the Director deny the Petition under 37 C.F.R. §1.181, and therefore, find that the above-identified application is abandoned, Applicants hereby Petitions for Revival of this Application under 37 C.F.R. §1.137(b).

1. Petition Fee

Applicant is a small entity. The undersigned authorizes the Commissioner to charge the small entity fee of \$770 and any other necessary fees to Deposit Account 50-2263.

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## 2. Reply and/or Fee

Payment of the Issue Fee of \$755 is provided for in the attached copies of the Part B – Fee(s) Transmittal and PTO-2038.

## 3. Terminal Disclaimer

Applicants submit that since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

## CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office to the fax number 571-273-8300 on the below date.

*Michael J. Halbert* 2-2-09  
Attorney for Applicant(s) Date of Signature

Respectfully submitted,

*Michael J. Halbert*

Michael J. Halbert  
Attorney for Applicant(s)  
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USPTO

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PAGE 1/001

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Auto-reply fax to 4083787770 COMPANY:

## Auto-Reply Facsimile Transmission

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TO:

Fax Sender at 4083787770

Fax Information

Date Received:

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Total Pages:

2 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

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Cover  
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TRANSMITTAL FORM		Filing Information																																		
<p>(to be used for all correspondence with this office)</p> <p>Total Number of Pages in this Transmittal: 3</p>		Application Number	10748,629																																	
		Filing Date	December 29, 2008																																	
		First Named Inventor	Weldong Yang																																	
		Art Unit	2824																																	
<p>Examiner Name</p>		Charles Roberto																																		
<p>Attorney Contact No.</p>		NAN065 US																																		
<p><b>ENCLOSURES (check all that apply)</b></p> <table border="0"> <tr> <td><input checked="" type="checkbox"/> For Transmittal Form (1.00)</td> <td><input type="checkbox"/> Drawing(s)</td> <td><input type="checkbox"/> New Address Communication to TC</td> </tr> <tr> <td><input checked="" type="checkbox"/> Fee Attached (PTO 2038 1.00)</td> <td><input type="checkbox"/> Licensing-Related Paper</td> <td><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences</td> </tr> <tr> <td><input type="checkbox"/> Amendment/Reply</td> <td><input type="checkbox"/> Petition</td> <td><input type="checkbox"/> Appeal Communication to TC (please include appeal fee)</td> </tr> <tr> <td><input type="checkbox"/> After Final</td> <td><input type="checkbox"/> Petition to Convert to a Provisional Application</td> <td><input type="checkbox"/> Reopening Introduction</td> </tr> <tr> <td><input type="checkbox"/> Administrative Modification</td> <td><input type="checkbox"/> Petition of Attorney, Representative, or Agent of Correspondence Address</td> <td><input type="checkbox"/> Status Letter</td> </tr> <tr> <td><input type="checkbox"/> Extension of Time Request</td> <td><input type="checkbox"/> Terminal Decision</td> <td><input type="checkbox"/> Other (indicate below)</td> </tr> <tr> <td><input type="checkbox"/> Express Appointment Request</td> <td><input type="checkbox"/> Request for Reheard</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Information Disclosure Statement</td> <td><input type="checkbox"/> CO, Number of CO(s)</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Certified Copy of Priority Document(s)</td> <td><input type="checkbox"/> Landscape Table as CO</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Response to Mailing Portal (intermediate procedure) (2.00)</td> <td colspan="2"> <p>This Commissioner is hereby authorized to charge any additional fees due to Deposit Account 80-2283.</p> </td> </tr> <tr> <td><input type="checkbox"/> Response to Mailing Portal (under 37 CFR 1.52 or 1.53)</td> <td colspan="2"></td> </tr> </table>				<input checked="" type="checkbox"/> For Transmittal Form (1.00)	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> New Address Communication to TC	<input checked="" type="checkbox"/> Fee Attached (PTO 2038 1.00)	<input type="checkbox"/> Licensing-Related Paper	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences	<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (please include appeal fee)	<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Reopening Introduction	<input type="checkbox"/> Administrative Modification	<input type="checkbox"/> Petition of Attorney, Representative, or Agent of Correspondence Address	<input type="checkbox"/> Status Letter	<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Decision	<input type="checkbox"/> Other (indicate below)	<input type="checkbox"/> Express Appointment Request	<input type="checkbox"/> Request for Reheard		<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CO, Number of CO(s)		<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table as CO		<input type="checkbox"/> Response to Mailing Portal (intermediate procedure) (2.00)	<p>This Commissioner is hereby authorized to charge any additional fees due to Deposit Account 80-2283.</p>		<input type="checkbox"/> Response to Mailing Portal (under 37 CFR 1.52 or 1.53)		
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<p><b>CERTIFICATE OF TRANSMISSION/DIALING</b></p> <p>I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office at the fax number 571-272-2105 on January 16, 2009.</p> <p><i>Michael J. Harbort</i> 1-16-09          Attorney for Applicant      Date of Signature</p> <p><small>Facsimile Transmittal Form (PTO Form 1007) is to be used for all correspondence with the U.S. Patent and Trademark Office. This form is to be filled out by the sender of the facsimile transmission. It is not to be filled out by the recipient. The form is to be filled out by the sender of the facsimile transmission. It is not to be filled out by the recipient. The form is to be filled out by the sender of the facsimile transmission. It is not to be filled out by the recipient.</small></p>																																				
<p>PAGE 02 OF 02 AT 1/16/2009 5:19:41 PM [Eastern Standard Time] * SVR:USPTO-EFXXF-5/27 * DNIS:2738300 * CSID:4083787770 * DURATION (mm:ss):02:00</p>																																				